

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

THEODORE GLADYSZ,

Plaintiff,
v.
**CIVIL ACTION NO. 3:08-CV-64
(BAILEY)**

**GEORGE TRENT, C.O. JACOBY,
C.O. MCCLAIN, C.O. GASKINS,
C.O. ELDERS, C.O. MCCRAY,**

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge John S. Kaull. By Standing Order entered on March 24, 2000, this action was referred to Magistrate Judge Kaull for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Kaull filed his R & R on April 29, 2008 [Doc. 12]. In that filing, the magistrate judge recommended that this Court dismiss with prejudice the plaintiff's claims against defendant Elders and that it dismiss with prejudice the plaintiff's claims of verbal threats and harassment against defendants Trent and McCray.

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn*, 474 U.S. 140,**

150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); ***Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***, 727 F.2d 91, 94 (4th Cir. 1984).

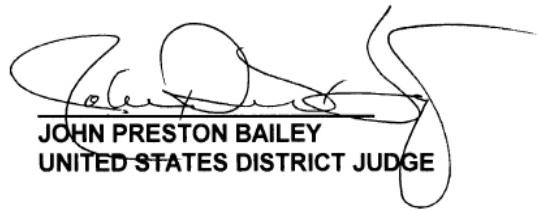
Here, objections to Magistrate Judge Kaull's R & R were due within ten (10) days of service of a copy of the R & R, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The Court notes that service of the R & R upon the plaintiff was accepted May 1, 2008. To date, neither party has filed objections to the R & R. Accordingly, this Court will review the report and recommendation for clear error.

Therefore, upon careful review of the R & R, it is the opinion of this Court that the magistrate judge's **Opinion/Report and Recommendation [Doc. 12]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, the Court hereby **DISMISSES with prejudice** the plaintiff's claims against defendant Elders and **ORDERS** that Elders be **DISMISSED** as a defendant in this action. Additionally, it is this Court's opinion that the plaintiff's claims of verbal threats and harassment against defendants Trent and McCray, or any other person, should be, and are, hereby **DISMISSED with prejudice**. Lastly, the plaintiff's Eighth Amendment claims against defendants Trent, Jacoby, McClain, Gaskins, and McCray, may proceed, and those defendants shall be **SERVED** with a copy of the summons and Complaint [Doc. 1] through the United States Marshal Service.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record and to mail a true copy to the *pro se* plaintiff.

DATED: May 22, 2008.



John Preston Bailey
UNITED STATES DISTRICT JUDGE